

Property of the Estate  
Automatic Stay

Erwin v. Fed.-Metals Credit Union

99-6291-fra

Dist. Ct.# 00-6314-AA

In re Pamela Erwin

Case # 699-64318-fra7

12/18/00

Dist. Ct. (Aiken) aff'g Alley

Unpublished

The Defendant, Fed.-Metals Credit Union, obtained a judgment against the debtor Plaintiff in state court and served a writ of continuing garnishment on Debtor's employer. The Debtor filed bankruptcy to stop the garnishment, sending a letter to the Defendant and Debtor's employer informing them of the filing and requesting a release of the garnishment. Defendant's attorney informed Debtor's employer that it was his opinion that the automatic stay did not prevent the post-petition garnishment of pre-petition wages. When the employer issued Debtor's paycheck, it sent \$330.73 to Defendant pursuant to the writ of garnishment. The Trustee filed an Inventory and Report of No Assets with the court and the Debtor thereafter demanded that Defendant return the \$330.73. When Defendant refused, Debtor filed suit against Defendant for violation of the automatic stay.

The District Court affirmed the Bankruptcy Court's ruling that the Debtor lacked standing to bring the action for violation of the automatic stay. The garnished wages were property of the estate at the time the automatic stay applied. The claim for violation of the automatic stay was not formally abandoned to the Debtor by the Trustee and, because the claim was not scheduled, it was not deemed abandoned under § 554(c) to the Debtor when the case was closed. As the claim remained property of the estate, the Debtor could not bring the claim herself under § 362(h) because she had no compensable injury.

E00-19(5)

No underlying bankruptcy opinion

FILED

CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON

DEC 18 2000

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CLERK, U.S. DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE, OREGON

BY                     

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In re:

PAMELA M. ERWIN,

Debtor.

PAMELA M. ERWIN,

Plaintiff,

E. . . .

FEDERAL-METALS CENTRAL  
CREDIT UNION,

Defendant.

Case No. 00-6314-AA  
(Adv. Pro. No. 99-06291-fra)

ORDER

AIKEN, Judge:

This case arises from a proceeding brought by plaintiff, a Chapter 7 debtor, against a judgment creditor for an alleged violation of the automatic stay under 11 U.S.C. § 362, after the creditor garnished pre-petition wages from a paycheck issued post-petition. Upon hearing, the Bankruptcy Court found that plaintiff could not assert a claim under § 362, because the wages remained property of the estate and plaintiff did not have an interest in the wages. Plaintiff now appeals from the order granting summary judgment in favor of defendant. The decision of the Bankruptcy Court is affirmed.

1 - OPINION AND ORDER

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1 On September 22, 1999, the estate trustee filed an Inventory and  
2 Report of No Assets with the court. Thereafter, plaintiff demanded that  
3 defendant relinquish the \$330.73. Defendant refused, and plaintiff  
4 filed suit.

5 The bankruptcy court found that plaintiff could not establish that  
6 she was damaged by defendant's alleged violation of the automatic stay,  
7 because the funds in question remained the property of the estate and  
8 plaintiff could show no personal interest in the funds. Expert of  
9 record, pp 2-4. Accordingly, the bankruptcy court found that plaintiff  
10 had no standing to bring an action against the defendant and granted  
11 summary judgment in favor of defendant.

#### 12 DISCUSSION

13 The issue presented in this appeal is whether the bankruptcy court  
14 correctly found that plaintiff could not establish damages resulting  
15 from defendant's alleged violation of the automatic stay under § 362(h),  
16 because the disputed wages remained the property of the estate. I find  
17 that the bankruptcy court was correct.

18 Wages earned but not paid become property transferrable to the  
19 estate once a petition for bankruptcy petition is filed. 11 U.S.C. §  
20 541(a)(6). Here, plaintiff had earned the wages by July 18, 2000, but  
21 had not been paid when she filed her bankruptcy petition on July 20,  
22 2000. Hence, plaintiff's wages for the pay period ending July 18, 2000,  
23 became the property of the estate as of July 20, 2000. It follows that  
24 any subsequent claim based on the alleged violation of the automatic  
25 stay belonged to the estate, not to plaintiff. Plaintiff cannot  
26 establish damages for the alleged violation of the automatic stay,  
27 because plaintiff had no interest in the garnished wages when the

1 automatic stay applied.

2 Plaintiff argues that the estate trustee abandoned any claim  
3 against defendant at a creditors meeting and therefore she is entitled  
4 to bring an action against defendant to enforce the automatic stay  
5 provision. The bankruptcy court did not make any findings whether the  
6 trustee abandoned any claim. However, based on the bankruptcy court's  
7 finding that the wages at issue remained the property of the estate, it  
8 follows that the bankruptcy court found no abandonment. Further,  
9 abandonment of a claim requires notice and hearing. 11 U.S.C.  
10 §554(a), (b). Plaintiff provides no evidence that the trustee provided  
11 notice of an abandonment or that any hearing on abandonment occurred.

12 Regardless, no claim against defendant could revert to plaintiff.  
13 At the close of the bankruptcy proceeding, any claims that were  
14 scheduled by the debtor but not disposed of are deemed abandoned and  
15 revert to the debtor. 11 U.S.C. § 554(c). Unscheduled claims remain  
16 the property of the estate and under the trustee's control. Id. §  
17 554(d); Tyler House Apartments, Ltd. v. United States, 38 Fed.Cl. 1, 6  
18 (1997) (citing Vreugdenhill v. Navistar Int'l Transp. Corp., 950 F.2d  
19 524 (8<sup>th</sup> Cir. 1991)). Here, plaintiff scheduled no claim against  
20 defendant and no such claim could possibly revert to plaintiff, because  
21 at no time did plaintiff have a claim against defendant. Thus, any  
22 claim the estate had against defendant for violating the automatic stay  
23 provision was and remains the property of the estate. Accordingly,  
24 plaintiff lacks standing to bring this suit.

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1 CONCLUSION

2 The bankruptcy court's decision is AFFIRMED. Plaintiff's Complaint  
3 is DISMISSED.

4 IT IS SO ORDERED.

5 DATED this 15 day of December, 2000.

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8 Ann Aiken

9 United States District Judge  
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FILED

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CLERK, U.S. DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE, ORE. 97401

BY SN

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In Re:

PAMELA M. ERWIN,

Debtor.

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PAMELA M. ERWIN,

Plaintiff,

Civil No. 00-6314-AA

Adv. Pro. No. 99-06291-fra

v.

FEDERAL-METALS CENTRAL  
CREDIT UNION,

Defendant.

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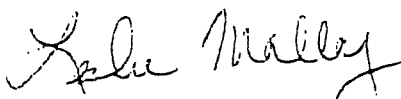
JUDGMENT

This action is dismissed.

Dated: December 18, 2000.

Donald M. Cinnamond, Clerk

by

  
Leslie Malley, Deputy

JUDGMENT

DOCUMENT NO: 38